



# THE VALIDITY OF INSTANT TRIPLE DIVORCE (TALĀQ) ACCORDING TO SHAREE'AH

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## ABSTRACT

Today, the issue of triple divorce has become highly controversial and has got much attention. This paper focuses on the detail pertaining to the permissibility and validity of triple *Talāq*. It deals that how triple *Talāq* is valid or not and justified or not as a method of divorce which is in practice in Muslim population. This paper attempts to analyse the rules and the genuineness of the law. According to majority of *sunni* jurists, pronouncing the word '*Talāq*' three times instantly in succession, equates with three *Talāqs*. On the contrary, according to the soundest and authentic view of scholars and according to Sheikh al-Islām Ibn Taimiyah (رحيم الله), Sheikh Ibn al-Qayyim (رحيم الله), Allama Sheikh Shaukani (رحيم الله), Sheikh ibn Bazz (رحيم الله) etc., instant three pronouncements of the word '*Talāq*' in one breath, in one sitting/session at the same time without waiting for '*Iddah*' (woman's prescribed waiting period after divorce or widowhood) equals only one *Talāq*. Most Arab, as well as many Muslim states such as Egypt, Syria, Jordan, Iraq, Sudan, Morocco, Yemen, Afghanistan, Libya, Kuwait, Qatar, Bahrain, and the United Arab Emirates, have, while formulating their own laws, followed Ibn Taimiyah's and Ibn al-Qayyim's positions on this issue.

**Keywords:** Instant triple *Talāq*, divorce in Islāmic law, *At-Tahleel* (*Halala*).

## INTRODUCTION:

*Talāq*, is the word, used in Islāmic law for divorce. It is an Arabic word which means 'to set free'. Divorce (*Talāq*) is dissolving the wedlock or part thereof. Islām lays great emphasis on the stability of matrimonial life and the strength of ties between the two spouses.

Shaykh Ibn 'Uthaymeen (رحيم الله) said: It is narrated that the Prophet (صلى الله عليه وسلم) said: "The most hated of permissible things to Allāh is divorce." This *Hadīth* is not *Sahīh*, but its meaning is sound. Allāh (سبحانه وتعالى) hates divorce, but He does not forbid it to His slaves, so as to make things easier for them. If there is a legitimate *sharee'* (religiously legislated) or regular reason for divorce, then it is permissible and depends on the likely outcome of keeping the woman as one's wife. If keeping her will lead to something that is contrary to *sharee'ah* (Islāmic law) which cannot be avoided except by divorcing her, such as if the woman lacks religious commitment or chastity, and the husband cannot set her straight, then in this case we say that it is better to divorce. But if there is no *sharee'* reason, then it is better not to divorce, rather in that case divorce is *makrooh* (disliked) (*Liqa at al-bab il-Maftooh*, number 55).

It is only in unavoidable circumstances that *Talāq* (divorce pronounced by a husband) is permitted in Islām as a lawful method to bring marriage contract to an end. The *Sharee'ah* takes a very reasonable and realistic view of such a sad situation where marriage becomes impossible to continue and all means fail to bring the couple together by permitting divorce as a last resort. Marriage is one of Allāh's graces. While divorce is called for only when harmony between the two spouses becomes impossible, it is true that the sanctity of marriage is the essential basis of family life, but it is also true that the two incompatible individuals cannot be kept together in a life of hell, for life. It is therefore necessary to give due allowance for human weaknesses and allow such people to part for good.

Allāh (سبحانه وتعالى) says, "And if they decide on divorce- then indeed, Allāh is Hearing and Knowing." [Al Qur'ān 2:227]

Permissibility of divorce is one of the meritorious features of Islām, and so is the permissibility of resumption of marital status. If the married life lacks harmony and becomes impossible, divorce becomes allowable.

## Global scenario on instant triple *Talāq*:

Allamah Sheikh al-Islām Ibn Taimiyah (رحيم الله) writes, "If somebody gives three *Talāqs* in one wording or in three wordings in one *tuhr* (wife's period of cleanliness) then it is *haram* (unlawful) to do so according to the opinion of the majority of *Ulema*. But the question of its being effective is under dispute. One opinion is that three *Talāqs* will be operative and another is that it will amount to only one *Talāq*. And the latter is correct as it is supported by the Qur'ān and *sunna*" (*Majmooh-e-Fataawa-e-Ibn-e-Taimiyah*, Volume 2, page 71).

Allamah Ibn Qayyim (رحيم الله) writes, "Allāh has ordained the giving of one *Talāq* after another. To give combined three *Talāqs* (on one occasion) is not really regular" (*Ighathat-ul-Lahfan* Volume 1, page 283).

Most Arab, as well as many Muslim states such as Egypt, Syria, Jordan, Iraq,

Sudan, Morocco, Kuwait, Yemen, Afghanistan, Libya, Qatar, Bahrain, and the United Arab Emirates, have, while formulating laws, followed Ibn Taimiyah's (رحيم الله), Ibn al-Qayyim's (رحيم الله) and Allama Shaukani's (رحيم الله) positions on this issue. The position of Ibn Taimiyah (رحيم الله) on this issue has influenced most of the legislation in a majority of the Muslim states regarding personal laws since the beginning of the twentieth century. Egypt was the first country to deviate from the position of *Jamhur* (the majority of Muslim Jurists) in 1929, when it provided that a divorce accompanied by a number expressly or implied, shall count only as a single divorce and such a divorce is revocable except when three *Talāqs* are given, one in each *Tuhr*. Morocco, Iraq, Jordan, Afghanistan, Libya, Kuwait, and Yemen, adopted similar laws in 1957/1958, 1959, 1976, 1977, 1984, 1984, and 1992, respectively. Besides these, many other Muslim countries have also adopted Ibn Taimiyah's (رحيم الله) opinion as the guideline for their personal laws on this topic. These include the United Arab Emirates, Qatar and Bahrain being the latest countries, respectively, to embrace Ibn Taimiyah's (رحيم الله) views on triple *Talāq*.

## Triple *Talāq*:

In principle Triple *Talāq* (three divorces pronounced by a husband) is allowed in Islām, but instant pronouncement by most of the Muslims (husbands) in one breath, in one sitting at the same time without waiting for '*Iddah*' (woman's prescribed waiting period after divorce or widowhood), is not allowed. Instant three divorces uttered at the same time are only to be counted as one according to the soundest view of scholars. It was authentically reported in *Sahīh* Muslim on the authority of Ibn 'Abbas (رضي الله عنه) that the (pronouncement) of three divorces during the lifetime of Allāh's Messenger (صلى الله عليه وسلم) and that of Abū Bakr (رضي الله عنه) and for two years of the caliphate of 'Umar (رضي الله عنه) was deemed as one time of divorce. Then, 'Umar (رضي الله عنه) said, "People hasten in a matter in which they are required to observe respite. So, it is recommended to impose it upon them," and he imposed it upon them (Narrated by Muslim 17/1472. This is a *Sahīh hadīth*). It is evident that the divorce in this way is counted as a threefold divorce according to *Ijtihad* (juristic effort to infer expert legal rulings) made by 'Umar (رضي الله عنه). Yet, it is better to follow the authentic *sunna* than following *Ijtihad* made by 'Umar (رضي الله عنه) or others for the benefit of the Muslims. This is supported by the report narrated by Imām Ahmad Ibn Hanbal (رحيم الله) in his *Musnad* through an authentic *sanad* (chain of narrators) from Ibn 'Abbas (رضي الله عنه) that Abū Rukanah (رضي الله عنه) made three pronouncements of divorce and later regretted. So, he went to the Prophet (صلى الله عليه وسلم) who returned his wife to him, and said: It is one divorce.

According to the most correct opinion of scholars, *Talāq* is not affected if it is declared once or thrice, in a fit of anger. They have to prove the claim that the apparent state which caused divorce is true. On the other hand, when anger is so intense that a person is no longer aware of what he is doing or saying, the divorce is not affected according to *Ijma'* (consensus of scholars). In this case, he is like one who is insane and one who has lost all power of reason due to unintentional drunkenness. Uttering divorce in a state of intentional drunkenness does not become effective due to loss of reason. Uthmān (رضي الله عنه) issued a *Fatwa* that supported this view and it was followed by a group of people of knowledge, because it was based on *Sharee'ah* (Islāmically lawful) evidence (Fatwa of Sheikh 'Abdul 'Aziz Bin 'Abdullah Ibn 'Abdul Rahman Ibn Bazz (رحيم الله) *Talāq* which complies with the *sunna* and ruling on uttering the divorce three

times in one session or in case of anger, *Book on Talāq*, Volume 21).

Holy Qur'ān, the paramount source of Islāmic Jurisprudence, has not ordained that the instant three divorces pronounced in a single breath in one sitting would have the effect of three separate divorces. To this effect the relevant verse of the Qur'an can be relied upon:

Allāh (سبحانه وتعالى) says, “And divorced women shall wait (as regards their marriage) for three menstrual periods, and it is not lawful for them to conceal what Allāh has created in their wombs, if they believe in Allāh and the Last Day. And their husbands have the better right to take them back in that period, if they wish for reconciliation. And they (women) have rights (over their husbands as regards living expenses, etc) similar (to those of their husbands) over them (as regards obedience and respect, etc) to what is reasonable, but men have a degree (of responsibility) over them. And Allāh is All-Mighty, All-Wise.” [Al Qur'ān 2:228]

Allāh (سبحانه وتعالى) says, “The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness. And it is not lawful for you (men) to take back (from your wives) any of your *Mahr* (bridal money or gift given by the husband to his wife at the time of marriage) which you have given them, except when both parties fear that they would be unable to keep the limits ordained by Allāh (e.g. to deal with each other on a fair basis). Then if you fear that they would not be able to keep the limits ordained by Allāh, then there is no sin on either of them if she gives back (the *Mahr* or a part of it) for her *Al-Khul'* (divorce). These are the limits ordained by Allāh, so do not transgress them. And whoever transgresses the limits ordained by Allāh then such are the *Zalimun* (wrong-doers, etc).” [Al Qur'ān 2:229]

These verses clear that divorce time is three menstrual periods and not three seconds! It has been ordained in *Surah Talāq* that whenever a *Talāq* is given it must be given for an '*Iddah*' (prescribed period): “O Prophet! When you (people) divorce (give *Talāq*) your wives, divorce them for their '*Iddah*' (prescribed time). And reckon the '*Iddah*.’” [Al Qur'ān 65:1]

What giving *Talāq* for an '*Iddah*' means is that the *Talāq* should be given at such a time from which the '*Iddah*' can be counted. A man who gives instant three *Talāqs* has no regard for '*Iddah*' period because, the '*Iddah*' began from the moment he gave the first pronouncement of *Talāq* but this '*Iddah*' period is disregarded for the second and the third *Talāq*. It is necessary to consider '*Iddah*' for every *Talāq*. The Qur'ān has not only commanded that the *Talāq* should be given with a consideration of '*Iddah*' but it has also given the right of reverting to wife within the period of '*Iddah*': “When you have divorced women, and they have reached their term, ('*Iddah*'), then retain them on equitable terms or release them on equitable terms.” [Al Qur'ān 2:231]

This verse makes it clear that when the term of '*Iddah*' is about to come to its end the wife can be retained in a nice way. It means that the husband can revert to her before the end of '*Iddah*'. The question is who has suspended this right of reverting before the end of '*Iddah*'? This right has been given by Allāh (سبحانه وتعالى). If a *Nass* (Divine order either in Qur'ān or in *Hadīth*) is available in this respect then there is no problem and if there is no such text then it only means that the man has a right to revert to his wife before the end of the '*Iddah*' of the third *Talāq*. Therefore, this right of reverting remains there also after the triple *Talāq* given at a time. In other words, the third *Talāq* becomes effective only after the *Rajae* (revocable) *Talāq* given on two occasions and not at a time. Allāh (سبحانه وتعالى) has given to man the right only to give separate *Talāqs*, as is clear from the words '*at Talāq Marrataam*' (Al Qur'ān Al-Baqarah 2:229). So, when the authority to combine them has never been given, how three *Talāqs* given at one moment can become effective?

This afore mentioned *Hadīth* of Ibn Abbas (رضي الله عنه) is being cited in support of the effectiveness of instant triple *Talāqs* given at a time. They say that when Umar (رضي الله عنه), in the presence of the *Sahābah* (prophet's companions رضي الله عنهم) made the triple *Talāq* effective; it proves that it was legal and that there was a consensus (*Ijmaa*) over it. But the question is that when this *Hadīth* proves a decision of Umar (رضي الله عنه), then on the other hand, it also proves the practice prevalent during the days of the Prophet (صلى الله عليه وسلم) and in the times of Abū Bakr (رضي الله عنه). Then, how can it be said that the decision of Umar (رضي الله عنه) should be accepted and the practice, which was in vogue during the time of the Prophet (صلى الله عليه وسلم), and Caliph Abū Bakr (رضي الله عنه) should not be accepted? Indeed, the practice in vogue during the days of the Holy Prophet (صلى الله عليه وسلم) is, by all means, superior.

Imām Abū Hanifa (رحيم الله) holds that instant three pronouncements shall amount to three separate divorces and they shall result a final divorce. The explanation that the husband had used the three pronouncements simply for the sake of emphasis cannot change the nature of divorce and a final divorce would be affected. This is also the view held by majority of the *Hanafi* Jurists who hold that in such a case final divorce (*Mughallazah* divorce) would be affected and would be good in law and bad in religion. The expression "good in law" means that it will be given effect by a Qazi or Court. On the other hand Ibn Taymiah (رحيم الله) holds that if a husband does not repeat the divorce three times, but says "I divorce you three times or thrice" or uses some similar expression then the

pronouncement shall amount to only one pronouncement of divorce and so shall not be a final divorce. Ibn Ishaq, Tawus, Akramah and Ibn Abbas hold that instant three pronouncement of divorce at one and same time constitutes only one divorce (Fatawa Ibn Taymiah volume III, Page 141).

The issue of the 'triple divorce' is regarded as highly sensitive among the Muslims, not only in Kashmir but elsewhere. The Noble Qur'ān is very cautious in matters of divorce. Though Muslims have different views regarding triple *Talāq*, certain important things like the rules of purity of the woman (from menstruation), status of her virginity, waiting periods ('*Iddah*') as specified in Qur'ān etc., must be strictly adhered to, to validate any divorce. The slightest deviation nullifies the divorce. Three *Talāqs* have to be spaced over a period of three months or three menstrual periods to give husband and wife time for reconciliation through the intervention of relatives and friends. Moreover, *Talāq* can be pronounced only when the wife is in a state of *Tuhur*, i.e., purity after menstruation. If *Talāq* is pronounced during the period of menstruation it will not be valid. The Prophet (صلى الله عليه وسلم) has ordered wife to be taken back if the *Talāq* is pronounced during menstrual period. The practice of instant triple divorces (innovative triple divorces pronounced by a husband in one sitting or in one breath) is widespread among Muslims destroying marital life. The dispute has been highlighted by reports of some Muslims instantly divorcing their wives by mail, over the telephone, and even through mobile phone text messages which is incorrect way.

In short, the applicability and effectiveness of instant three *Talāqs* (irrevocable) by the utterance of triple *Talāq* at one sitting is not proved by any text of the holy Qur'ān, because, nowhere in the Qur'ān it is specifically mentioned that instant triple *Talāq* at a time will have the effect of final divorce. Just as there is no text of the Qur'ān in support of instant triple *Talāq* equivalent to final irrevocable *Talāq*, there is no clear-cut true *Hadīth* to support this view. The *Ahādīth* on which such argument is being advanced are not specific in this regard. Some of them never mention the triple *Talāq* in one sitting. The background of some of them is different, and hence they do not justify such conclusion. Some traditions are either *Muztarab* (confused) or *Da'if* (weak). Therefore, no argument (*Hujjat*) can be based on any of them. Now, think over the problem under discussion. Is not the decision of considering the utterance of three *Talāqs* at a time an irrevocable divorce severer, which deprives women of the prescribed time or waiting period ('*Iddah*') which Allāh (سبحانه وتعالى) has given them thereby destroying marital life, and there is no clear-cut text in support of such a harsh severity?

Allāh (سبحانه وتعالى) says, “O you who believe! Obey Allāh and obey the Messenger, and those of you (Muslims) who are in authority. (And) if you differ in anything amongst yourselves, refer it to Allāh and His Messenger, if you believe in Allāh and in the Last Day. That is better and more suitable for final determination.” [Al Qur'ān 4:59]

#### At-Tahleel (Halala):

*Tahleel* marriage is a kind of tinkering with the religion of Allāh (سبحانه وتعالى) and telling lies against Allāh (سبحانه وتعالى) and his Messenger (صلى الله عليه وسلم). In such a marriage, a woman who has been irrevocably divorced marries a man in order for it to become permissible for her to go back to her first husband. So (the second husband) enters into a marriage contract with her and has intercourse with her, then divorces her. This is like a hired stallion and is an invalid marriage. The woman does not become permissible to her first husband by means of such a marriage.

Similarly, if a man marries her without her knowing that his intention is to make it permissible for her first husband to remarry her, she does not become permissible to him by means of such a marriage.

If a man marries her in order to make her permissible, then he decides to keep her as his wife, he has no right to do so until he makes a new marriage contract with her and makes the marriage valid.

Islām issues a stern prohibition of such devilish tricks which are akin to adultery (*Zina*) and immorality. It is reported on the authority of 'Abdullah Ibn Mas'ūd (رضي الله عنه) that he said: “The Messenger of Allāh cursed the *Muhallil* (one makes *Tahleel*) and the one who has *Tahleel* made for him” (Narrated by Ahmad 1/459, An-Nasa'i 6/149, at-Tirmidhī 1120 and Al-Baihaqi 7/208. The *hadīth* is also supported by other narrations. This is a *sahīh hadīth*).

Imām al-Tirmidhī said: “This *Hadīth* is the reference point for the scholars among the companions of the Prophet, including 'Umar Ibn Al-Khattab, 'Uthmān Ibn Affān, 'Abdullah Ibn 'Umar and others. This is also the view of the *Fuqahā*' among the *Tābi'een*, and is the view of Sufyān Al-Thawri, Ibn Al-Mubārak, Al-Shāfi'i, Ahmad and Ishāq.”

#### Al-Khul' or Kula:

A wife can demand a *Kula* (divorce at the instigation of wife under Islāmic law) from her husband. In return she might have to pay back the dower (bridal gift, *Mahr*), money, jewellery etc. that she received from her husband at the time of marriage. So this is separation from the wife based upon money; it is so-called because the word *Khul'* means to divest oneself of a garment and the wife is, figuratively speaking, a garment for the husband.

It is based upon the words of Allāh (سبحانه وتعالى): “Then if you fear that they would not be able to keep the limits ordained by Allāh, then there is no sin on either of them if she gives back (the *Mahr* or a part of it) for her *Khul'* (divorce).” [Al Qur’ān 2:229]

It is reported on the authority of 'Abdullah Ibn 'Abbas (رضي الله عنه) that the wife of Thabit Ibn Qais came to the Prophet (صلى الله عليه وسلم) and said: “Oh, Messenger of Allāh! I do not blame Thabit for defects in his character or his religion, but I, being a Muslim, do not wish to behave in un-Islāmic manner (if I remain with him).” On that the Messenger of Allāh said (to her): “Will you give back the garden which your husband has given you (as *Mahr*)?” She said: “Yes.” Then the Prophet said to Thabit: “Oh, Thabit! Accept your garden, and divorce her once” (Narrated by al-Bukhārī 5273, An-Nasa’ī 6/169 and Ibn-i-Mājah 2056. This is a *sahīh hadīth*).

Therefore, it is permissible for the wife to request a divorce in the presence of a judge if the marriage is causing her injury that makes her life unbearable.

#### CONCLUSION:

Pronouncement of instant three *Talāqs* is prohibited in *sharee'ah* and if pronounced instantly at a time will be counted as only one *Talāq*. Instant triple divorce was not allowed during Prophet's (صلى الله عليه وسلم) lifetime, during the first Caliph Hazrat Abū Bakar's (رضي الله عنه) reign and also for more than two years during the second Caliph Hazrat 'Umar's (رضي الله عنه) time. Later on Hazrat 'Umar (رضي الله عنه) permitted it on account of a peculiar situation.

It is, thus, clear that during the Prophet's (صلى الله عليه وسلم) time and for a period after him, such cases of triple divorce wherein pronouncing divorce husband swore to his intention of divorcing only once, were termed as cases of single divorce and couples were reunited. During Caliph 'Umar's (رضي الله عنه) time when people started misusing this facility and indulged in widespread triple divorce, reverting back to the wife after swearing to their intention of giving a single divorce. Caliph Hazrat 'Umar (رضي الله عنه) decreed that triple divorce would become effective, refusing to allow the couples to revert to each other since the facility of oath taking had been turned into a meaningless game by many. The object of Caliph 'Umar (رضي الله عنه) in treating it a final divorce was clearly to stop people from wanton repetitions of divorce and from treating the matter of divorce in a light and non-serious way. It must have suited the needs of his own time, but practice in the modern times has resulted in a great deal of harm. People in the excitement of moment give three instant triple divorces to the wives at one and same time in one sitting in one breath without observing *'Iddah* (obligatory waiting period) i.e., three menstruation periods or three months, without least intention to pronounce a final divorce but simply to emphasise the first pronouncement, a step which they grievously repent afterwards when they find that mischief cannot be undone and thereby destroying marital life.